Filed 12/13/16 In re P.V. CA4/2

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re P.V. et al., Persons Coming Under the Juvenile Court Law.	
RIVERSIDE COUNTY DEPARTMENT OF PUBLIC SOCIAL SERVICES, Plaintiff and Respondent, v. C.M. et al., Defendants and Respondents.	E065749 (Super.Ct.No. INJ1400039) OPINION

APPEAL from the Superior Court of Riverside County. Suzanne S. Cho, Judge. Affirmed.

William D. Caldwell, under appointment by the Court of appeal, for Defendant and Appellant C.M.

Jesse McGowan, under appointment by the Court of Appeal, for Defendant and Appellant A.A.

Gregory P. Priamos, County Counsel, and James E. Brown, Guy B. Pittman and Carole Nunes Fong, Deputy County Counsel, for Plaintiff and Respondent.

Defendants and appellants A.A. (mother) and C.M. (father) appeal from the juvenile court's order terminating their parental rights to three children, P.V. (born 2006), M.V. (born 2010) and N.A. (born 2012).[1] Father raises two claims of error on appeal, specifically (1) that the juvenile court abused its discretion in deciding to place the children in nonrelative foster care (a prospective adoptive home), instead of with a maternal aunt of the children; and (2) that it abused its discretion and violated his procedural due process rights by denying his proposed substitute counsel's oral request at the Welfare and Institutions Code[2], section 366.26 hearing for a "contested hearing" with respect to certain evidentiary issues, and a continuance to prepare for such a hearing. Mother joins in father's arguments, and further asserts that, if the termination of father's parental rights is reversed, she should receive the same relief.

We find no error, and affirm.

I. FACTUAL AND PROCEDURAL BACKGROUND

On January 31, 2014, a section 300 petition was filed with respect to the children and their half brother, who was then approximately one month old. The petition filed by

[1] Dependency matters related to mother's two younger children, born December 2013 and November 2015, who have a different father, have been adjudicated separately, and raised in separate appeals. (Case Nos. E064384 and E065765.) In this opinion, we use the term "the children" to refer collectively to P.V., M.V., and N.A. only, not including their half siblings, whom we will discuss only as necessary for context.

[2] Further undesignated statutory references are to the Welfare and Institutions Code.

defendant and respondent County of Riverside Department of Public Social Services (DPSS) alleged, among other things, that mother abused methamphetamine throughout her pregnancy with the infant, and that both mother and infant had tested positive for the substance when he was born. The petition further alleged that father has a criminal history, including arrests for public intoxication and inflicting corporal injury on a spouse; that mother and father have a history of engaging in domestic violence with one another; and that father was not a member of the children's household, had failed to provide support or protection, and his exact whereabouts were unknown.

The juvenile court detained the children as to father on January 31, 2014, but mother was initially allowed to retain physical custody. Shortly thereafter, however, the children were also detained as to mother and placed in foster care; an amended section 300 petition, filed February 13, 2014, added allegations mother abused alcohol in addition to methamphetamine; that mother had recently tested positive for methamphetamine; and that she had admitted to using methamphetamine on February 8, 2014. Father did not appear at either of the two detention hearings, and his whereabouts remained unknown.

Father also did not appear at a combined jurisdiction and disposition hearing held on March 10, 2014. The juvenile court sustained the amended dependency petition, adjudged the children dependents of the court, removed them from parental custody, and ordered reunification services for mother. Pursuant to section 361.5, subdivisions (a) and (b)(1), reunification services were denied to father.

In a report filed September 16, 2014, DPSS informed the court that it had located father in Mexico. The report describes father as "unavailable to parent due to his inability to come to the U.S." DPSS subsequently elaborated that father had been deported in November 2012, and could not come to the United States legally.

Father returned to the United States in November 2014 and met with a social worker. In December 2014, father filed a section 388 petition seeking visitation with the children.[3] In February 2015, he filed another section 388 petition, seeking to vacate the juvenile court's jurisdiction and disposition findings as to him. He argued that DPSS had failed to exercise reasonable diligence in attempting to locate him, violating his due process right to notice of the proceedings. In March 2015, DPSS conceded the notice issue, and the juvenile court vacated its jurisdiction and disposition findings as to father only, setting a hearing to rehear those issues.

Father was present for the new jurisdiction and disposition hearing as to him conducted on April 29, 2015. After hearing father's testimony and reviewing the record, the juvenile court sustained the allegations of the first amended dependency petition as to father, modified to reflect that his whereabouts were no longer unknown. The juvenile court found that the children's current out-of-home placement was necessary and appropriate, and ordered father to receive six months of reunification services.

On December 7, 2015, the juvenile court terminated reunification services to father and set a section 366.26 hearing. Mother's reunification services had been

[3] The social worker began arranging visits prior to the hearing on father's section 388 petition requesting visitation.

terminated in September 2014, but no section 366.26 hearing had previously been set, to allow more time to find a prospective adoptive home that could take all of the siblings. During the dependency process, various relatives of mother and father had been considered for placement, but either withdrew or were rejected by DPSS for one reason or another. As relevant to the present appeal, in February 2016, a maternal aunt's home was certified for placement by DPSS, although the relative assessment worker expressed some "concerns" to the social worker. By that time, however, the children and their half sibling had long been placed with the same nonrelative prospective adoptive family, where they had been since December 2014, later joined by mother's youngest child, born in November 2015. DPSS therefore recommended that the children remain with their current caregivers.

Among the factual issues raised at the section December 7, 2015, hearing, in connection with the question of whether the six months of reunification services granted to father had been successful, was whether father had been honest with DPSS about his ongoing contact with mother, including whether he continued to be in a relationship with her and whether he was residing with her, despite her continued drug abuse and chaotic behavior. The juvenile court, in the course of ruling that reunification services should be terminated, found that father had been "misleading."

At the outset of the section 366.26 hearing on April 6, 2016, the juvenile court considered a request to substitute counsel by father. The proposed substitute counsel requested "to be allowed to substitute in for father if the court would allow [him] a continuance on a contested hearing." Counsel indicated that a continuance was necessary

because he had not had time to adequately prepare, but subsequently indicated he could proceed if he could verify his witnesses were there. Upon further inquiry by the court, he indicated that he wished to present testimony of two witnesses challenging DPSS's position that father was having ongoing contact with mother. The court noted that the issues counsel proposed to raise through the proffered testimony had already been litigated, and were not relevant to matters under consideration at a section 366.26 hearing. Counsel apologized to the court, stating: "I would withdraw then my request to substitute in, because the only issues from what [father] told me that I thought I could address had to do with the witnesses that issues have been resolved. There is nothing else I can add to it." The juvenile court then stated that the substitution request was denied. The hearing proceeded with father represented by his original, appointed counsel.

With respect to section 366.26 issues, father interposed only a general objection to DPSS's recommendation that parental rights be terminated, with a permanent plan of adoption, stating: "I would object for the record, Your Honor." Mother argued that the beneficial parental relationship and sibling relationship exceptions applied, and that legal guardianship was an appropriate alternative. Counsel for the children stated that she was "submitting on the recommendation to terminate parental rights," and agreed that adoption was the best permanent plan for the children and that no exceptions applied. The children's counsel noted that "[t]hese children, all five siblings, are together in a wonderful placement, individuals that are committed to adopting all of them." The juvenile court terminated mother and father's parental rights and set adoption as the children's permanent plan, in addition to various other findings and orders.

II. DISCUSSION

A. Father Does Not Have Standing to Challenge Relative Placement Issues.

Father argues that the trial court failed to appropriately apply the relative placement preference, codified in section 361.3, to the maternal aunt's request that the children be placed with her, a request that he supports. Mother joins in father's argument. The argument fails because neither father nor mother has standing to raise it; their parental rights have been terminated, and reversal of the placement order would not advance any challenge to the juvenile court's order terminating parental rights.

"Section 361.3 gives 'preferential consideration' to a relative request for placement, which means 'that the relative seeking placement shall be the first placement to be considered and investigated.'" (*Cesar V. v. Superior Court* (2001) 91 Cal.App.4th 1023, 1033.) "A parent's appeal from a judgment terminating parental rights confers standing to appeal an order concerning the dependent child's placement only if the placement order's reversal advances the parent's argument against terminating parental rights." (*In re K.C.* (2011) 52 Cal.4th 231, 238.) Otherwise, it is only the relative who is denied placement that has standing to contest the placement denial. (*In re Jayden M.* (2014) 228 Cal.App.4th 1452, 1460.)

Here, father and mother appeal from a judgment terminating their parental rights. They have made no attempt to articulate why reversal of the placement order might advance an argument against terminating their parental rights. (See *In re K.C.*, *supra*, 52 Cal.4th at p. 237 [cases finding standing because pre-termination orders concerning children's placement could lead juvenile court not to terminate parental rights "do not

assist father because he makes no such argument"].) They have therefore failed to demonstrate that they have standing to raise relative placement issues on appeal. To the extent the department and the court may have failed to adequately consider placement with the maternal aunt, as father and mother argue, it is the maternal aunt who would have standing to raise the issue. (*In re Jayden M.*, *supra*, 228 Cal.App.4th at p. 1460.) She has not.

In re Isabella G. (2016) 246 Cal.App.4th 708, a case cited repeatedly by father, does not support a different analysis of standing. In that case, the father and the paternal grandparents of the child challenged, among other things, an order denying the grandparents' section 388 petition requesting placement of the child. (*In re Isabella G.*, *supra*, at p. 711.) The Court of Appeal did not find that the father had standing to bring such a challenge despite the termination of his parental rights; rather, it considered the merits of the placement issues without explicitly discussing standing. (*Id.* at pp. 719-725.) Opinions are not authority for propositions not considered. (*People v. Avila* (2006) 38 Cal.4th 491, 566.) Moreover, it appears that the appropriate standing analysis for the circumstances of *In re Isabella G.* would be that the grandparents had standing to challenge the denial of their petition requesting placement, while the father occupied "a status loosely akin to that of amicus curiae." (*In re K.C.*, *supra*, 52 Cal.4th at p. 239 [discussing similar circumstance in *Cesar V. v. Superior Court*, *supra*, 91 Cal.App.4th 1023.].) In other words, in *In re Isabella G.*, the father did not independently have standing to assert a challenge regarding relative placement, but the court appropriately considered his arguments in support of the grandparents' claim of error. Here, in

contrast, the maternal aunt has never filed a section 388 petition affirmatively requesting placement, or otherwise challenged the juvenile court's placement orders in a cognizable fashion.[4]

Because we conclude father and mother lack standing to assert arguments regarding relative placement, we need not, and do not, address the merits of their arguments, or the parties' contentions regarding forfeiture for failure to raise the arguments in the juvenile court.

B. The Trial Court Did Not Err by Denying Substitute Counsel's Request for "Contested Hearing" and Continuance.

Father contends that the juvenile court abused its discretion and violated his due process rights by "limiting the issues to be addressed" at the April 6, 2016 section 366.26 hearing, and denying his substitute counsel's request for a continuance to allow his time to prepare for "a contested hearing," which he characterizes on appeal as a request for a "trial." We find no error.

The purpose of a section 366.26 hearing is to determine the most appropriate permanent plan for a minor after the parents have failed to reunify. (*In re Jessie G.* (1997) 58 Cal.App.4th 1, 6; § 366.26, subd. (b).) Adoption is the permanent plan preferred by the Legislature. (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 573.) The court may only select adoption as the permanent plan if it finds by clear and convincing

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[4] The maternal aunt's first and only attempt to become involved in this litigation was the filing of a notice of appeal of the order terminating the parent's parental rights. (Case No. E066198.) That appeal was dismissed because she had never previously taken any action to become a party to the case.

evidence the minor will likely be adopted. (§ 366.26, subd. (c)(1).) "After the parent has failed to reunify and the court has found the child likely to be adopted, it is the parent's burden to show exceptional circumstances exist." (*In re Autumn H.*, *supra*, at p. 574.)

Father's substitute counsel proposed to hold a "contested hearing" on matters irrelevant to the section 366.26 inquiry regarding adoptability and the appropriate permanent plan, namely, whether father continued to have contact with mother and to what degree. Moreover, the matters had already been litigated at the December 7, 2015, hearing, before the trial court terminated father's reunification services. The appropriate time to request an evidentiary hearing, and proffer any witnesses to support father's position on the matter, was then (if not before). Substitute counsel acknowledged as much; when informed that the matters had already been litigated, he apologized, noted that he was not entirely familiar with the record, and instead "just went by what [father] was telling me." He then withdrew the request to substitute in as father's counsel, because the issues he "thought [he] could address" were issues that "have been resolved."

On appeal, father characterizes the proposed "contested hearing" as a "trial," which could have encompassed not only the issues relating to father's continuing contact with mother, but also the applicability of the relative-placement preference with respect to the maternal aunt, and "could have also provided sufficient proof of an exception to terminating parental rights." This characterization does not just indulge in speculation, but is affirmatively contradicted by the record. Father's substitute counsel explicitly stated that he had "nothing else" he could "add" to father's case, other than the two witnesses he proposed regarding father's continuing contact with mother. The juvenile

court did not deny father an opportunity to present evidence and cross-examine witnesses; rather, he had no further evidence or witnesses to present.

In short, father has demonstrated no error by the juvenile court, and no violation of his due process rights, in connection with his substitute counsel's proposal to hold a "contested hearing."[5]

III. DISPOSITION

The orders appealed from are affirmed.

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HOLLENHORST
J.

We concur:

RAMIREZ
P. J.

MCKINSTER
J.

[5] In light of this analysis, we need not discuss the parties' disputes about the scope of the relative placement preference, father's lack of compliance with the statutory procedures for requesting a continuance, or any of the several other issues raised or suggested by the parties in briefing.